

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

EB DOCKET NO. 03-152

WILLIAM L. ZAWILA

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter Of:) EB Docket No.
	) 03-152
WILLIAM L. ZAWILA)
	) Facility ID No.
Permittee of FM Station KINGS,	) 72672
Coalinga, California)
)
AVENAL EDUCATIONAL SERVICES,	) Facility ID No.
INC.	) 3365
Permittee of FM Station KAAX,)
Avenal, California)
)
CENTRAL VALLEY EDUCATIONAL	) Facility ID No.
	) 9993
SERVICES, INC.)
)
Permittee of FM Station KAJP,)
Firebaugh, California)
)
H.L. CHARLES D/B/A/ FORD CITY	) Facility ID No.
BROADCASTING	) 22030
)
Permittee of FM Station KZPE,)
Ford City, California)
)
LINDA WARE D/B/A/ LINDSAY	) Facility ID No.
BROADCASTING	) 37725
)
Licensee of FM KZPO,)
Lindsay, California)

Hearing Room TW A363
445 12th Street, S.W.
Washington, DC 20554

Wednesday, May 12, 2004
10:00 a.m.

BEFORE: JUDGE ARTHUR STEINBERG

NEAL R. GROSS
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WASHINGTON, D.C. 20005-3701

APPEARANCES:

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Inc.:

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On Behalf of the Enforcement Bureau:

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On Behalf of Laser Broadcasting:

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I-N-D-E-X

WITNESS: CROSS REDIRECT RECROSS

None.

EXHIBITS: IDENTIFIED RECEIVED

None.

Start Time: 10:00 a.m.

End Time: 10:14 a.m.

P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

JUDGE STEINBERG: This is a prehearing conference in EB Docket No. 03-152. I scheduled the conference for the purpose of considering the impact on this proceeding of a letter dated April 16, 2004, from the Chief of the Audio Division of the Media Bureau, which dismissed as unacceptable for filing certain Form 316 and Form 314 applications filed by H.L. Charles, D/B/A Ford City Broadcasting, Linda Ware, D/B/A Lindsey Broadcasting, and/or Laser Broadcasting Corporation.

And, why don't I, since we haven't met in a while, why don't we just state for the record your appearances here today.

Ms. Sadowsky?

MS. SADOWSKY: Your Honor, I'm here on behalf of the estates of Linda Ware and H.L. Charles.

JUDGE STEINBERG: And, Mr. Martin?

MR. MARTIN: I'm here on behalf of Laser Broadcasting Corporation.

JUDGE STEINBERG: Okay, and you are the proposed -

MR. MARTIN: Assignee of the two stations owned by the estates.

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1 JUDGE STEINBERG: Okay. And, Mr. Shook
2 and Mr. Janas?

3 MR. SHOOK: James Shook and David Janas on
4 behalf of the Chief Enforcement Bureau.

5 JUDGE STEINBERG: Okay. Basically, I
6 just called the conference to find out what's going on
7 in light of the April 16th letter. If you feel
8 comfortable telling me - well, I know how it's
9 impacted, I can guess how it's impacted you, but if
10 you feel like you can share what your plans are and
11 how you are going to proceed, and then I can consider
12 that and determine where we go from here.

13 MS. SADOWSKY: Your Honor, on behalf of the
14 estates, we will be filing a Petition for
15 Reconsideration. The deadline for that filing is May
16 24th, by our calculations, and we intend to file by
17 that date.

18 And therein, I can tell you that we intend
19 to provide letters testamentary which have been issued
20 since the decision - I'm sorry, which will have been
21 issued since the decision came out on April 16th.

22 The petitions for probate filed by the
23 executors were granted by the Superior Court of the
24 State of California in Orange County on May 6th. It's
25 my understanding that letters testamentary, typically,

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1 are issued within a week thereafter, so we expect to
2 receive the letters testamentary within the next
3 couple of days, and they will be appended to our
4 Petition for Reconsideration, and we believe that we
5 will prevail.

6 JUDGE STEINBERG: Okay. Have you - you
7 don't have to answer this - have you had any
8 discussions with the staff of the Media Bureau about
9 this and gotten some kind of assurance as to how
10 they'll treat it? And again, you don't have to answer
11 if it's attorney/client work product or whatever, if
12 you don't want to.

13 MS. SADOWSKY: No, Your Honor, there's been
14 no discussions.

15 JUDGE STEINBERG: Okay.

16 MS. SADOWSKY: Since the issuance of the
17 decision.

18 JUDGE STEINBERG: Okay. What if you just
19 filed, instead of a recon petition, new 316s? I mean,
20 just fresh - just say okay, fine, these were
21 unacceptable, now we'll file new ones and these are in
22 proper form. I'm just throwing that off the top of my
23 head.

24 MS. SADOWSKY: Can we go off the record?

25 JUDGE STEINBERG: Yes.

1 (Whereupon, a discussion off the record.)

2 JUDGE STEINBERG: Did that complete what
3 you wanted to tell me?

4 MS. SADOWSKY: I'd be happy to answer any
5 further questions.

6 JUDGE STEINBERG: Okay.

7 Mr. Martin, do you have any comments?

8 MR. MARTIN: We also are going to file a
9 Petition for Reconsideration on or before May 24. It
10 will probably have a little different content than the
11 executors' petition. We believe the Bureau erred in
12 dismissing the 316s. We think the case law provides
13 that the remedy for late filing of 316s or direct
14 notifications is either designation of an issue or a
15 monetary forfeiture.

16 Essentially, by dismissing these 316s, pro
17 forma application, notification type applications, the
18 Bureau has, in effect, put the skids on the distress
19 sale pleadings that are on file.

20 Your Honor, I'm sure, is aware that the
21 contract within the distress sale pleading provides
22 for all or nothing.

23 JUDGE STEINBERG: I know that.

24 MR. MARTIN: Yes, so Laser is not prepared
25 to accept three of the five stations, and we are - our

1 client is an established minority-owned broadcasting
2 company in California, with 13 or 14 other radio
3 stations, and is growing. This provides an
4 opportunity for them to expand into the San Joaquin
5 Valley which is, as you know, a heavily Hispanic area
6 of California, and we feel that the distress sale
7 should not be blocked by the staff because there was
8 a delay in filing 316s. There are other more
9 traditional remedies to deal with failure to file a
10 316 or a death notice than death for the application.

11 JUDGE STEINBERG: If you don't want to
12 grapple with the decision as to whether or not to
13 grant a distress sale, this is a very clever way of
14 avoiding a decision.

15 MR. MARTIN: Well, there's another case -

16 JUDGE STEINBERG: And, I feel no - I don't
17 feel uncomfortable saying that on the record.

18 MR. MARTIN: - there's another case that
19 I'm not involved in, the Virgin Islands case I guess
20 we'll call it, where the staff also dismissed a
21 distress sale on procedural grounds.

22 JUDGE STEINBERG: Oh, yeah, I know that
23 one.

24 MR. MARTIN: And, that one is percolating
25 now on the 8th floor.

1 JUDGE STEINBERG: Oh, it is? Okay. That
2 was one of Judge Sipple's cases, Christian Stead, is
3 that what it was?

4 MR. MARTIN: I believe so.

5 MS. SAWORSKI: Your Honor, in connection
6 with that case, it's my understanding that Judge
7 Sipple has put that proceeding on ice for at least -
8 Jim, you can be more specific than I, but because of
9 the pending pleadings in that case the judge has staid
10 it.

11 JUDGE STEINBERG: Okay.

12 Mr. Shook, do you want to add anything or
13 comment on anything?

14 MR. SHOOK: Only to follow up on your
15 suggestion that it would be the better course for you
16 to find out from the Audio Division's records whether
17 they'd be more inclined to entertain and move more
18 quickly on a refiled 316, rather than a Petition for
19 Reconsideration, and that doesn't mean that you
20 shouldn't file the Petition for Reconsideration if you
21 feel that's the right way to go, but certainly if you
22 want to speed things along here if you get the word
23 from the staff that, you know, the Petition for
24 Reconsideration is filed, and it's likely to take a
25 certain amount of time, on the other hand, if you

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1 refile the 316s and the 314s it will take less time.

2 If you talk to them, I think they'd be
3 amenable to at least giving you informal advice.

4 JUDGE STEINBERG: The problem that I had
5 with this is, you know, maybe I'm being naive, is the
6 letter - the April 16th letter said, "It is axiomatic
7 that deceased individuals may not hold Commission
8 permits and licenses." You know, that seems pretty
9 axiomatic to me, whatever axiomatic means, and I used
10 the word. But, if a deceased person can't hold a
11 license or permit, and the Media Bureau will not allow
12 the substitution of another entity to hold license or
13 permit, what happens to that license and what happens
14 to that permit? Is it in limbo? Is it automatically
15 - are they automatically revoked, or are they
16 automatically rescinded? Ware, the station license to
17 Ware, my understanding is it's operating, but without
18 a licensee, with a dead licensee, and without another
19 entity being responsible for holding the license, do
20 they have to immediately stop operating because there
21 is no legal entity that could be called the licensee?
22 I mean, these are questions that occurred to me. What
23 happens to this hearing, you know, let's say we do
24 have to go to hearing, relating to the license and
25 permit, who is the legal entity which appears at the

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1 hearing? It can't be Ware and it can't be Charles
2 since they are dead, and it can't be - because the
3 Media Bureau as of this moment wouldn't permit the
4 substitution of those entities for the licensee. So,
5 I'm at a total loss as to how to proceed, if we have
6 to proceed.

7 You know, perhaps, hopefully, they will
8 allow the substitutions, or, you know, grant the
9 assignment of - whatever, grant the 316s, and, you
10 know, take us out of this never-never land, and,
11 hopefully, we won't have to meet here again.

12 But, if they act again like they acted in
13 the April 16th letter, I may be writing you or calling
14 you in here to prepare something for me that I can -
15 with questions that I have to certify to the
16 Commission, and have the Commission answer these
17 questions, because I can't.

18 But, you know, that's what troubled me.

19 Okay. I think I've gotten the - and, I
20 wanted to get all this out on the record, and I would
21 have no problem with when the transcript comes with
22 you showing it to anybody you want to show it to, it's
23 a public document, and you can do with it what you
24 want. I thought it was important to get these things
25 out on the record.

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1 I think what we'll do is then, if nobody
2 objects, we'll just wait and see what happens for the
3 next couple of months. Is that amenable to everybody
4 here? Mr. Martin?

5 MR. MARTIN: That's what we are here to ask
6 you to do, sir.

7 JUDGE STEINBERG: Okay. Ms. Sadowsky, do
8 you have any problem with that?

9 MS. SADOWSKY: No.

10 JUDGE STEINBERG: Do you have any problem
11 with that, Mr. Shook?

12 MR. SHOOK: Your Honor, the representation
13 by Ms. Sadowsky that the petitions to have the letters
14 testamentary issued were granted that that should
15 solve our problem in terms of whether or not to move
16 forward with this now or to wait. It would seem the
17 more prudent course is to wait, and I take it you are
18 actually holding something in your hands which would
19 support what you have said?

20 MS. SADOWSKY: I have documents showing -
21 yes, given that the Media Bureau doesn't seem to trust
22 counsel's representations and phone calls, and I would
23 be happy to provide you with documentation of what has
24 been issued.

25 MR. SHOOK: That would be terrific. Thank

1 you.

2 JUDGE STEINBERG: Let me, while we are
3 doing that, I do this in all my cases in which - I
4 just want to recognize that in the courtroom now is
5 William D. Freedman, F-R-E-E-D-M-A-N, who has honored
6 us here with his presence, and I just want to
7 acknowledge that and thank you for coming and looking
8 over us.

9 MR. FREEDMAN: Thank you.

10 JUDGE STEINBERG: Okay. Is there anything
11 that we - so, I'll just keep the case staidd and then
12 we'll see what happens from here.

13 Could you do me a favor and send me
14 courtesy copies of whatever you file, both Mr. Martin
15 and Ms. Sadowsky, just -

16 MS. SADOWSKY: Sure.

17 MR. MARTIN: Yes, Your Honor.

18 JUDGE STEINBERG: - because I'd like to
19 kind of read them and see what they have to say, as
20 part of my continuing legal education program.

21 Okay, so I appreciate it, and we'll go off
22 the record now.

23 Thank you all for coming.

24 (Whereupon, the above-entitled matter was
25 concluded at 10:14 a.m.)

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WILLIAM L. ZAWILA

Name of Hearing

EB DOCKET NO. 03-152

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

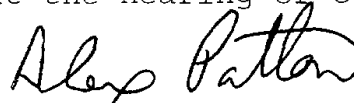
MAY 12, 2004

Date of Hearing

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May 12, 2004

Alex Patton



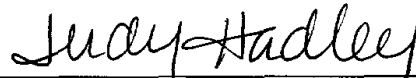
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